

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SIERRA EQUIPMENT, INC.	§	REMOVED FROM
	§	CAUSE NO. DC-16-00282
	§	14TH JUDICIAL DISTRICT
	§	DALLAS COUNTY
	§	
vs.	§	CIVIL ACTION NO. _____
	§	
	§	
LEXINGTON INSURANCE CO.	§	JURY

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, comes Defendant Lexington Insurance Company, who, pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, hereby removes to this Court the civil action now pending in the 14th Judicial District Court in Dallas County, Texas, entitled “Sierra Equipment, Inc. versus Lexington Insurance Company,” Cause No. DC-16-00282, on the following grounds:

I. Procedural History and Timeliness of Removal

1. Plaintiff Sierra Equipment Company (“Plaintiff”) brought suit against Lexington Insurance Company (“Defendant”) in Dallas County, Texas on January 11, 2016. The District Clerk of Dallas County gave this case cause number DC-16-00282 and assigned the case to the 14th Judicial District. (Pl.’s Orig. Pet., Ex. C-1)

2. Citation and Plaintiff's Original Petition were first served on the Texas Secretary of State as Defendant's agent for service of process on February 1, 2016. A copy of the Petition, and the related process papers served upon Defendant to date are attached hereto as Exhibit C-1. No other pleadings have been served upon Defendant.

3. This notice of removal is being filed within 30 days of the date on which Defendant received a copy of this petition through service or otherwise. Therefore, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

II. Factual Background

4. In Plaintiff's Original Petition, it alleges that in 2008, Defendant issued an insurance policy to a third party—Lewis Equipment, LLC—and that the third party was required to insure heavy equipment leased from Plaintiff. (Pl.'s Orig. Pet. at 1 & 3, Ex. C-1) Plaintiff alleges that during the policy period (2008), the equipment the third party leased from Plaintiff was "lost, removed, damaged, or cannibalized...." (*Id.*).

5. Plaintiff alleges a loss in excess of \$4.9 million. (*Id.*). Plaintiff further alleges contacting Defendant in 2014 and that Defendant has not responded to this contact. (*Id.*).

6. Plaintiff alleges the following causes of action against Defendant: (1) Declaratory Judgment action seeking a declaration of its rights, status, and other legal relations under the policy. (*Id.* at 4). On February 22, 2016, Defendant answered in state court and denied Plaintiff's allegations. (Def. Ans., Ex. C-4).

III. Basis for Removal: Diversity Jurisdiction

7. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because this is a civil action between citizens of different states in which the amount in controversy exceeds \$75,000.00.

A. There is Complete Diversity

8. Plaintiff is a Nevada Corporation with a principal place of business in Las Vegas, Nevada. (Pl.'s Orig. Pet. at 2, Ex. C-1)

9. For the purposes of determining citizenship, Defendant is incorporated in Delaware and its principle place of business is Boston, Massachusetts. Therefore, for purposes of diversity jurisdiction, Defendant is a citizen of Delaware and Massachusetts. *See* 28 U.S.C. §1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”).

10. Because Plaintiff is a citizen of Nevada and Defendant is a citizen of Delaware and Massachusetts, the requirement for complete diversity of citizenship is met.

B. The Amount in Controversy Exceeds \$75,000.00 Exclusive of Interest and Costs

11. Plaintiff alleges in its petition a loss in excess of \$4.9 million. (Pl.’s Orig. Pet. at 1, Ex. C-1). Through its cause of action, Plaintiff alleges it is entitled to a declaration of rights under an insurance policy to which it is not a party and to which it is not listed as an additional insured. (*Id.*) Plaintiff also alleges it is entitled to attorney’s fees for this matter. (*Id.*).

12. “The amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1252-53 (5th Cir. 1998). When a declaratory judgment is sought regarding the coverage provided by an insurance policy, “the ‘object of the litigation’ is the policy and the ‘value of the right to be protected’ is the potential liability under that policy.” *Id.*

13. Based on the petition and applicable case law, it is evident that Plaintiff seeks an amount in excess of \$75,000.00, excluding interest and costs. As such the statutory requirement for the amount in controversy in this case is satisfied.

IV. Defendant has Satisfied Procedural and Venue Requirements for Removal

14. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is diversity of citizenship between parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

15. Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81.1 for this court Defendant has attached the following to this Notice of Removal:

Exhibit A An index of all documents clearly identifying each document and indicating the date the document was filed in the state court action;

Exhibit B Docket Sheet from the 14th Judicial District Court;

Exhibit C Each document filed in the state court action; and

Exhibit D A separately signed certificate of interested persons that complies with Local Rule CV-3.1(c) or 3.2(e).

16. No executed citation or process has been filed with the Dallas County District Clerk's office, and Defendant is aware of only one notice or order signed by the state judge: a notice for dismissal for want of prosecution issued on February 8, 2016.

17. Dallas County, Texas is located within the Northern District of Texas, Dallas Division. Venue for this action is proper in this Court because the Northern District of Texas, Dallas Division is "the district and division embracing the place where such action is pending." 28 U.S.C. §§ 1441(a) and 1446(a).

18. Immediately upon filing this Notice of Removal, written notice of the filing of this Notice will be served on Plaintiff's counsel, as required by 28 U.S.C. § 1446(d).

19. Defendant will promptly file a notice of this Notice of Removal and a copy of this Notice with the Dallas County District Clerk's office as required by 28 U.S.C. § 1446(d).

V. Jury Demand

20. Defendant has demanded a jury trial in the state court action.

VI. Conclusion

This Court has jurisdiction over this matter under 28 U.S.C. § 1332 because it is a civil action between citizens of different states in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Therefore, Defendant Lexington Insurance Company gives notice that the matter bearing DC-16-00282 in the 14th District of Dallas County, Texas is removed to the United States District Court for the Northern District of Texas, Dallas Division. Defendant requests that this court retain jurisdiction for all further proceedings in this matter.

Respectfully submitted,

WRIGHT & CLOSE, LLP

/s/ Thomas C. Wright

Thomas C. Wright
State Bar No. 22059400
Federal ID No. 2729
Attorney in Charge
Patrick B. McAndrew
State Bar No. 24042596
Federal ID No. 613764
One Riverway, Suite 2200

Houston, Texas 77056
Telephone: (713) 572-4321
Facsimile: (713) 572-4320
wright@wrightclose.com
mcandrew@wrightclose.com

*Counsel for Defendant,
Lexington Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to the following counsel of record by electronic filing notification, email and regular U.S. mail, on this 1st day of March, 2016.

Andrew B. Ryan
Ryan Law Partners LLP
100 Highland Park Village, Suite 200
Dallas, Texas 75205
Telephone: (214) 417-0076
Facsimile: (888) 594-6240
andy@ryanlawpartners.com

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*Attorneys for Plaintiff,
Sierra Equipment, Inc.*

/s/ Thomas C. Wright
Thomas C. Wright